IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 686 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAIYALAL MOJILAL KADIA

Versus

VISNAGAR MUNICIPALITY

Appearance:

1. Special Civil Application No. 686 of 2002

MR PK JANI for Petitioner No. 1

MR BS PATEL for Respondent No. 1-2

MRS RANJAN B PATEL for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/09/2002

ORAL JUDGEMENT

Rule. Mr BS Patel waives service of rule for the

respondents. The petition is taken up for final disposal today.

2. The petitioner is an Accountant appointed by the Visnagar Municipality. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 5-11-2001 (Annexure E) transferring the petitioner from the administrative office of the respondent-Municipality to the Water Works Office of the respondent-Municipality. The petitioner has also challenged the notice issued by the respondents calling upon the petitioner to vacate the said quarters rented to the petitioner since 1979. The petitioner has prayed for restraining the authorities from disconnecting the electricity and water supply to the said quarters.

3. As far as challenge to the order of transfer is concerned, the petitioner has submitted that the petitioner has been appointed as an Accountant by the respondent-Municipality in the year 1978 and since then he has been discharging duties as an Accountant. However, by the impugned order, the respondents are requiring the petitioner to perform the function of attending to the complaints pertaining to water works and not to perform the duties as an Accountant. The petitioner has further challenged the notice dated 3-12-2001 (Annexure F) calling upon the petitioner to vacate the quarters. It is submitted that the petitioner was rented the quarters by the Municipality in the year 1979 and there is no justification for requiring the petitioner to vacate the quarters now. It is submitted that the petitioner is a tenant of the premises and the respondents have no authority to require the petitioner to vacate the quarters which the petitioner has been legitimately occupying and for which the petitioner has been paying monthly rent also regularly.

4. Earlier this Court had directed the respondent Municipality not to disconnect the electricity and water supply to the quarters in question and that direction has been complied with.

5. On merits, affidavit-in-reply has been filed by the Chief Officer justifying the transfer in the following terms:-

> "I state that the petitioner is an experienced person and his services were required at Water Works as there were some complaints regarding supply of water etc. and accounting. I state that approximately 70% of the Municipal budget is

to be spent on water works as it is basic amenity and for that reason only for the administrative purpose the petitioner has been transferred. I state that regarding administrative transfer of the petitioner the respondent No.1 Municipality had a full-fledged discussion in the General Body meeting and in the meeting dtd. 30-1-2002 considering the reasons etc., the General Body by an unanimous resolution has accepted the reasons for administrative transfer of the petitioner."

6. The learned counsel for the petitioner, however, submits that the impugned order has been passed malafide as the petitioner had raised an objection about payment of salary to the Chief Officer on the ground that such salary could not be paid without producing no objection certificate of the Collector of the district.

7. The allegations of malafide have been denied both by the Chief Officer and also by the President of the Municipality. The President of the Municipality has also filed her affidavit stating inter-alia, as under:-

"I state that the petitioner has not come out with clean hands as I am the authority in the Municipality who has always appreciated the services of the petitioner. I state that neither the Chief Officer of the Municipality nor any other person has tried to influence me for transferring the petitioner. In fact the allegations made by the petitioner against myself and the Chief Officer are imaginary and bears no voice."

The President has further stated that there are lots of complaints regarding the working of the Water Works department and, therefore, she had discussed the matter with other councillors and it was decided that one experienced senior officer be posted in the Water Works department so that the complaints get minimized and that the President herself had suggested the name of the petitioner to the Chief Officer in view of the petitioner's efficiency.

8. In view of the aforesaid stand taken by the respondents, the petitioner's counsel made a grievance that the petitioner might be required not only to register the complaints regarding water supply but the petitioner even might be required to accompany the plumbers for supervising the work of the plumbers and, therefore, the petitioner is being assigned an altogether

different nature of duties than the work of accounting.

9. Allaying the aforesaid apprehension of the petitioner, Mr BS Patel, learned counsel for the respondents states that the petitioner will only be required to perform the duties of an Accountant and to register the complaints regarding the water works. The petitioner will required to work in an office which is a fully equipped office with two independent telephone connections and that the petitioner will not be required to go out with the plumbers.

It is, thus, clarified on behalf of the respondent-authorities that the petitioner will be required to work only as an Accountant and for recording the complaints regarding the water works. In view of this statement, the apprehension voiced by Mr Unwala for the petitioner does not survive.

10. Coming to the question of quarters, it appears that the petitioner was given the quarters in question on rent way back in the year 1979. The petitioner's transfer from the administrative office to the water works office cannot have any impact on the petitioner's right to occupy the quarters which were rented out to him in 1979. It is the case of the respondent-authorities that the respondent-authorities require the premises in question for the purpose of storage of cement. Admittedly, the respondent-authorities have not followed any procedure prescribed by law for taking back possession of the premises in question. Hence the impugned notice dated 3-12-2001 cannot be said to be in accordance with law. The said notice dated 3-12-2001 at Annexure `F' is, therefore, required to be quashed and set aside.

11. In view of the aforesaid discussion, the petition is partly allowed. While the impugned order dated 5-11-2001 (Annexure E) is not interfered with in view of the aforesaid clarification being made by the learned counsel for the respondent-authorities that the petitioner will continue to be assigned the duties of an Accountant and will also be recording the complaints regarding the water works, the Court quashes the impugned notice dated 3-12-2001 at Annexure `F' to the petition.

The respondents are also restrained from disconnecting the electricity and water supply to the quarters in question.

12. The petition is accordingly partly allowed. Rule

is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah,J)

zgs/-